IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 635 of 1995

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHANJIBHAI DIWALBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 635 of 1995
MR PM VYAS for Petitioner No. 1-3
MR PR ABICHANDANI, APP, for Respondent

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 18/07/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

By this conviction appeal, the appellants-original accused persons, have challenged the legality and validity of the judgment and order of their conviction and sentence for life imprisonment, inter alia, contending that the learned Additional Sessions Judge, Bharuch at Camp: Rajpipla, while delivering the impugned judgment on 26.5.95 has committed serious error of law and facts in holding the accused persons guilty of the offence punishable under section 302 read with section 34 of the Indian Penal Code (IPC for short) and sentencing them to life imprisonment and also imposing fine of Rs.200/- and in default to suffer simple imprisonment for three months.

In order to examine the merits and challenge against the impugned judgment and order of conviction and sentence under section 302 read with section 34 of the IPC recorded by the learned Additional Sessions Judge, in Sessions Case No.255 of 1994, let us first have a conspectus of a few relevant and material profile leading to the rise of the trial and the resultant conviction and sentence of the appellants under section 302 read with section 34 of the IPC.

The unfortunate incident of killing of one Shamalbhai occurred at about 3.30 p.m. on 28.3.94 at village Amletha in Nandod taluka of Bharuch district. As the prosecution case runs, the complainant, son of the deceased Shamalbhai and the deceased, were passing by the residential premises of the accused persons. At that time, accused persons, armed with deadly weapons, attacked the deceased Shamalbhai. Firstly, appellant No.1, original accused No.1 (A-1) initiated the attack by giving a blow of axe on the head of the deceased, whereas, appellant No.2, original accused No.2 (A-2) started giving one after other blows with the help of iron pestle (parai). At that time, appellant No.3, original accused No.3 (A-3), Devanbhai, had taken the deceased in an injured condition firmly holding him inside the house of A-1. It is also the case of the prosecution that, thereafter, the deceased was further beaten and when he lost his life, he was thrown out of the house of A-1, Dhanjibhai. It is, in this context, the prosecution case has been that the accused persons had entertained a common intention to kill deceased Shamalbhai and pursuant the said common intention attacked him with deadly weapons and one after the other inflicted blows with the weapons held by them and committed murder and thereby rendered themselves liable

for the offence punishable under section 302 read with section 34 of the IPC.

Obviously, accused persons denied the charges against them framed by the Additional Sessions Judge on 14.2.95 and pleaded total ignorance and claimed to be tried. In order to support the prosecution case, following 12 witnesses came to be examined, out of them 3 persons are eye witnesses.

1. Dr.Devandrabhai K. Patel (Ex.15)
2. Janyantibhai Khemabhai (Ex.18)
3. Rajendrabhai Shamalbhai, Complainant (Ex.5)
4. Natwarbhai Manilal (Ex.22)
5. Hirabhai Bhagabhai (Ex.24)
6. Ratanbhai Shamalbhai (Ex.25)
7. Arunbhai Deshadbhai (Ex.26)
8. Shamalbhai Jethabhai (Ex.27)
9. Ratilalbhai Somabhai (Ex.28)
10. Bhoytabhai Bhangadbhai (Ex.31)
11. Natvarbhai Chimanbhai, P.I. (Ex.32)
12. P.J.Valvi, P.I. (Ex.35)

The prosecution has also placed reliance on documentary evidence which is articulated hereinbelow and reference of which will be made as and when required at an appropriate stage hereinafter in course of our discussion.

1. Panchnama of cloth (Ex.14)
2. Post Mortem Notes (Ex.16)
3. Map of place of incident (Ex.20)
4. Panchnama of place of incident (Ex.23)
5. Panchnama of iron pestle (parai) (Ex.30)
6. FSL Report (Ex.33)
7. FSL Findings (Ex.34)
8. Complaint (Ex.36)
9. Despatch note of muddamal (Ex.37)
10. Copy of the station dairy entry (Ex.38)

Upon assessment, scrutiny and appraisal of the documentary as well as viva voce evidence, the learned Additional Sessions Judge, reached to the conclusion that the homicidal death of the deceased Shamalbhai was directly attributable to the blows inflicted upon his person by the accused persons, which resulted into his death. The Trial Court, therefore, held the accused persons guilty for the offence punishable under section 302 read with section 34 of the IPC and finding that the case on hand is not a case calling for rarest of rare one of capital punishment, and therefore, imposed minimum

sentence of life imprisonment and also directed to pay fine of Rs.200/- and in default simple imprisonment for three months, which is directly and precisely under challenge in this conviction appeal before us.

We have been addressed by the learned advocate Mr.Vyas appearing for the appellants, original accused persons and by learned APP Mr.Abichandani. In course of their submissions, they took us through the relevant and material testimonial and viva-voce evidence. We have, also, carefully and dispassionately considered them. We have also assessed, analysed and evaluated the relevant and material evidence, documentary as well as oral.

We are unable to uphold the first contention that the prosecution has failed to establish beyond reasonable doubt the offence of murder as provided in section 302 of the IPC. In our opinion, the views recorded by the Trial Court and the ultimate conclusion reached by it could not be assailed and we found that it is not vulnerable. The evidence of three eye witnesses, out of whom two are sons of deceased Shamalbhai, is noticed to be quite trustworthy on the main core of the prosecution case. PW-3 Rajendrabhai, son of deceased was with his father when his father was attacked by three accused persons at about 3.30 p.m. on the unfateful day. He has in clear terms testified before the Trial Court that all the three accused persons attacked his father and A-1, Dhanji gave axe blow on the head, A-2 Jogibhai Devanbhai gave iron pestle (parai) blow and A-3 Devanbhai gave blows with wooden log armed by him. We have found that his evidence runs like a knife going through butter and has remained totally reliable despite cross-examination. He is the complainant and it was he who had lodged the complaint at the earliest point of time before the Police Station. The case of the prosecution, thus is succinctly supported by the eye witnesses, sons of the deceased and corroborated by the complaint given by the eye-witness Rajendra, PW-3. As such, the evidence of this eye-witness, in our opinion, could be said to be quite sufficient and trustworthy to transfix the culpability of the accused persons for the offence they are charge with.

The evidence of eye-witness Rajendra is fully supported by the evidence of his brother Ratan, PW-6 (Ex.25). After having read and examined the testimony of eye-witness Ratan, it cannot be said even for a moment that he does not support the case of the prosecution and the testimony of his brother Rajendra. We are satisfied that the evidence of PW-6, Ratan is quite trustworthy and dependable and the Trial Court has rightly placed

reliance on his testimony. Not only that, the prosecution version and the evidence of two eye witnesses discussed hereinabove, is also materially corroborated by the evidence of third eye witness PW-7, Arun, who is examined at Ex.26. After having a close look at the testimony of third eye-witness Arun, it becomes clear that he lends material corroboration to the version of the prosecution and the testimony of two other eye witnesses.

The Medical Officer who had examined the dead body and conducted post-mortem of deceased Shamalbhai, PW-1, Dr.Devendrakumar was examined, at Ex.15. He prepared the post-mortem notes and it is produced at Ex.16. It is noticed by us, upon scanning through his testimony that there were as many as 11 injuries on the person of the deceased. The infliction of blows by A-1, Dhanji with axe armed by him on the head of the deceased was possible and the injuries mentioned in column 17 in the post-mortem report, like injury Nos.1,2, 3, 4, 6 and 7 were possible by iron pestle. It is, also, clearly, testified by the Medical Officer that injuries sustained by the deceased on his head were sufficient in ordinary course of nature to cause death. The cause of death, according to the Medical Officer was shock, bleeding and injuries on the head which had penetrated the brain. It becomes, therefore, very clear that the prosecution has also received substantial and significant reinforcement by the evidence of Medical Officer who conducted the autopsy, PW-1, Dr.Devendrakumar at Ex.15.

Apart from that, there is substantial evidence which would also lead to strengthen the prosecution case and which have been noticed and articulated in the impugned judgment. The first information report was lodged by the son of the deceased, eye witness, at the earliest point of time before the nearest Police Station. The complaint is produced at Ex.36. The reports of the Forensic Science Laboratory and the findings are also supporting the case of the prosecution, which are produced at Ex.33 and 34.

In our opinion, therefore, after having taken into consideration the entire testimonial collection, viva voce evidence and the catelogue of events supported by three eye witnesses, out of whom two are sons of the deceased and one is an independent witness and corroborated by the medical evidence of Dr.Devendrakumar and the promptness in lodging the first information report leave no manner of doubt in transfixing the culpability and complicity of all the accused persons for

the offence punishable under section 302 read with section 34 of the IPC. The very fact that all the accused persons were armed with deadly weapons, A-1 was armed with axe, A-2 was armed with iron pestle and A-3 was armed with wooden log and the factum that they attacked one after other on the person of the deceased when deceased along with his son was passing by their residence would, unequivocally, go to show that they had not only formed but nourished and cherished the common intention to kill deceased Shamalbhai and in order to accomplish the cherished common intention of all the three accused persons, organised attack came to be made on the person of the deceased and followed by the infliction of not less than 11 blows on the person of the deceased which culminated into his death. These facts would speak volumes about the entertaining of the common intention and that too to kill or commit murder of deceased Shamalbhai. It is, in this respect, we are fully convinced that the culpability of all the accused persons is conclusively established without doubt for the offence under section 302 read with section 34 of the IPC committing the murder of deceased Shamalbhai and since the Trial Court has awarded the minimum sentence of life imprisonment, the quantification of sentence is, rightly not argued and therefore not necessary to be gone into.

Before parting we may state that we are fully satisfied that the conviction and the resultant sentence for life imprisonment pursuant to the impugned judgment of the Trial Court to all the three accused, appellants herein, under section 302 read with 34 of the IPC is fully justified and requires no interference in this conviction appeal. Therefore, this conviction appeal is dismissed.

(J.N.Bhatt, Acting CJ)

(A.L.Dave, J.)
(vjn)